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## ***Public Utility Commission of Texas***

Marlene H. Dortch - Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W. - TWA 325  
Washington, D.C. 20554

Irene Flannery - Vice-President of High Cost and Low Income Divisions  
Universal Service Administrative Company  
2120 L. Street, NW - Suite 600  
Washington, D.C. 20037

February 22, 2005

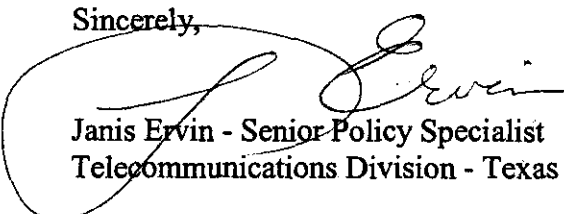
**RE: Federal-State Joint Board on Universal Service, CC Docket No. 96-45**  
**TX PUC Project No. 25787 - FCC Letters Regarding ETC Designation Pursuant**  
**to FTA '96 §214(e) (2)**

### **ETC Designation - Smartcom Telephone LLC**

Pursuant to Section 214(e) (2) of the Communications Act of 1934, as amended (the "Act") and 47 C.F.R. sections 54.201 - 54.203, the Texas Public Utility Commission (TPUC) has granted eligible telecommunications carrier (ETC) designation to Smartcom Telephone LLC (Smartcom). **Smartcom has been granted an ETC designation for the study areas of Southwestern Bell Telephone Company, dba SBC Texas, and Verizon Southwest.** The attached TPUC Order No. 3, *Notice of Approval for Designation as an Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP)*, in Docket No. 30607, issued on February 11, 2005.

If you require any additional information please call Janis Ervin at (512)-936-7372.

Sincerely,

  
Janis Ervin - Senior Policy Specialist  
Telecommunications Division - Texas Public Utility Commission

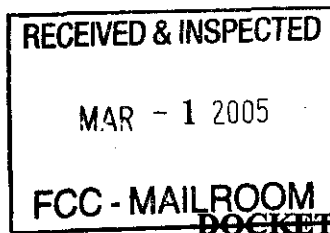
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**APPLICATION OF SMARTCOM  
TELEPHONE, LLC FOR ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
(ETC) DESIGNATION AND ELIGIBLE  
TELECOMMUNICATIONS PROVIDER  
(ETP)**

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**PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS**

**ORDER NO. 3  
NOTICE OF APPROVAL FOR DESIGNATION AS  
AN ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC) AND  
ELIGIBLE TELECOMMUNICATIONS PROVIDER (ETP)**

***Procedural History***

On December 29, 2004, Smartcom Telephone LLC (Smartcom) filed a combined application for designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418, as well as designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. SUBST. R. 26.417. Smartcom requested that the applications be docketed and consolidated for simultaneous processing and approval of its application requiring waiver of P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II). Smartcom also requested a final effective date of January 31, 2005, or 30 days after completion of *Texas Register* notice publication, whichever is later. Smartcom holds Service Provider Certificate of Operating Authority No. 60229 granted in Docket No. 20275 on February 18, 1999. Smartcom seeks support for all exchanges in the study areas of Southwestern Bell Telephone Company, d/b/a SBC Texas (SBC) and Verizon Southwest (Verizon).

The Commission issued Order No. 1 in this proceeding which established a procedural schedule, approved *Texas Register* notice, and established February 3, 2005, as the intervention deadline. Pursuant to P.U.C. SUBST. R. 26.417(f)(2)(A)(i) and 26.418(g)(2)(A)(i), the effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later. Therefore, the earliest effective date for this proceeding is February 14, 2005. On January 13, 2005, Order No. 2 was issued granting the Applicant's request for consolidation of its ETC and ETP applications.

No objection, comment, or motions to intervene were filed, and no hearing was requested. P.U.C. SUBST. R. 26.417(f)(2)(A) and 26.418(g)(2)(A) provide that applications for ETC/ETP designation may be reviewed administratively.

On February 7, 2005, Commission Staff (Staff) filed a recommendation for approval of ETC and ETP status for Smartcom based on the following:

***Designation as Eligible Telecommunications Carrier***

To qualify for ETC status, a carrier must meet four conditions:<sup>1</sup>

1. The carrier must be a common carrier, as that term is defined by the Federal Telecommunications Act of 1996 (FTA '96), Section 3(10).
2. The carrier must offer the following services (requisite services),<sup>2</sup> using its own facilities or a combination of its own facilities and the resale of another carrier's services:<sup>3</sup>
  - (a) voice grade access to the public switched network;
  - (b) local usage;
  - (c) dual tone multi frequency signaling or its functional equivalent;
  - (d) single party service or its functional equivalent;
  - (e) access to emergency services, including such services as 911 or enhanced 911;
  - (f) access to operator services;
  - (g) access to interexchange service;
  - (h) access to directory assistance;
  - (i) toll blocking for qualifying low income customers, and
  - (j) toll control for qualifying low income customers.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 54.201(b)-(d) (2001).

<sup>2</sup> 47 C.F.R. § 54.101 (2001).

<sup>3</sup> 47 C.F.R. § 54.201 (2001).

<sup>4</sup> Pursuant to FTA § 54.400(d), the FCC defines "toll limitation" as either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both service.

3. The carrier must advertise the availability of and charges for the requisite services in a media of general distribution.<sup>5</sup>
4. The carrier must provide Lifeline and Link Up support, and may not collect a deposit from a customer receiving such support if the customer also elects toll blocking.<sup>6</sup>

Smartcom meets all of the above criteria. Smartcom will advertise the designated services and their rates through marketing advertisements using media of general distribution. Smartcom provides the required services through a combination of its own facilities and unbundled network elements (UNE-P and UNE-L). Smartcom has made a commitment to offer Lifeline and Link Up support and has provided a tariff and self-certification form for applicants with its application which it will adopt upon designation.

Smartcom has not requested any waiver of the Federal Communications Commission requirements. Smartcom does not offer toll control.

SBC and Verizon serve the exchanges for which Smartcom requests Texas Universal Service Fund support. Neither Company is a rural carrier. Staff recommended that Smartcom be granted ETC designation.

#### ***Designation as Eligible Telecommunications Provider***

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(I) requires carriers applying for ETP status to meet the definition in PURA § 51.002(10). Smartcom meets this definition.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(II) requires carriers applying for ETP status to show they have been granted ETC status for federal universal service support pursuant to U.S.C. §214(e). ETP and ETC designations are being handled concurrently in this consolidated docket.

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<sup>5</sup> *Id.*

<sup>6</sup> 47 C.F.R. § 54.405 (2001).

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(III) requires carriers to specify the small or rural incumbent local exchange company (ILEC) service area in which they propose to be an ETP. Smartcom does not seek designation in a small or rural service area.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(III) requires applicants for ETP status show they offer the designated services defined in P.U.C. SUBST. R. §26.403 throughout the Texas High Cost Universal Service Plan or small and rural ILEC service area for which the carriers seek ETP status.

To qualify for ETP status, P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(III), requires carriers to specify the small or rural ILEC service are in which they propose to be an ETP and a carrier must show that they offer the designated services defined in P.U.C. SUBST. R. 26.403 throughout the Texas High Cost Universal Service Fund or small and rural incumbent local exchange carrier service areas for which the carriers seek ETP status. Smartcom has met this requirement. The designated services required for ETP status are:

1. flat rate single party service including primary directory listings;
2. tone dialing;
3. access to operator services;
4. access to directory assistance services;
5. access to 911 service when provided by a local authority;
6. dual party relay service;
7. ability to report service problems seven days a week;
8. availability of an annual local directory;
9. access to toll services; and
10. lifeline and link up services.

P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(III) also requires the applicant to assume the obligation to provide the services required under P.U.C. SUBST. R. 26.403 to any customer. Smartcom stated that it meets and assumes the responsibility to offer the basic services defined in P.U.C. SUBST. R. §26.403 to all customers in its exchanges.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(IV) requires that Applicants show they offer the designated services through a means other than total service resale. Smartcom offers services through the use of its own facilities and leased unbundled network elements (UNEs) and therefore meets this requirement.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(V)-(VI) requires Applicant show that they have offered continuous service that meets the quality of service standards in P.U.C. SUBST. R. §26.52-§26.54, and that they offer Lifeline and Link-Up services in compliance with P.U.C. SUBST. R. §26.412. Smartcom provided a commitment to meet all quality of service standards in its Service Quality Questionnaire at the time it received its SPCOA and it affirms it meets benchmark standards. Smartcom has committed to file an amendment to its tariff to adopt the Lifeline and Link-Up services tariff, consistent with P.U.C. SUBST. R. §26.412 filed with its application immediately upon approval of its designations in this proceeding.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(VII) requires Applicant to advertise the availability of, and charges for, the designated services using media of general distribution. Smartcom stated it will meet the requirement by providing marketing advertisements using media of general distribution.

P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(VIII) and P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(IX) are requirements regarding the notice of the application. Smartcom's request for *Texas Register* notice was approved and published and meets those standards.

P.U.C. SUBST. R. §26.417(f)(2)(A)(i) requires an effective date of 30 days after the completion of notice. This issue was addressed in Order No. 1 and the earliest effective date available has been established as February 14, 2005.

Smartcom has also committed to offering the required designated services at a rate not to exceed 150 percent of the ILEC's tariffed rate in the same designated areas pursuant to the requirements of P.U.C. SUBST. R. §26.417(c)(1)(B).

Staff recommended that Smartcom be granted ETP designation.

***Ordering Paragraph***

In accordance with Staff's recommendation and for all the reasons stated therein, pursuant to the FTA § 214(e)(2) and P.U.C. SUBST. R. 26.418, Smartcom's application for ETC designation is approved effective February 14, 2005; pursuant to P.U.C. SUBST. R. 26.417, Smartcom's application for ETP designation is approved effective February 14, 2005. Smartcom is granted ETC and ETP status for all of the exchanges in the study areas of SBC and Verizon.

SIGNED AT AUSTIN, TEXAS the 11<sup>th</sup> day of February 2005.

PUBLIC UTILITY COMMISSION OF TEXAS



IRENE MONTELONGO  
ADMINISTRATIVE LAW JUDGE  
POLICY DEVELOPMENT DIVISION